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10/024,983	12/19/2001	Bartley Dean Maxon	DC4969	4816

137 7590 12/31/2002

DOW CORNING CORPORATION CO1232  
2200 W. SALZBURG ROAD  
P.O. BOX 994  
MIDLAND, MI 48686-0994

[REDACTED] EXAMINER

HUI, SAN MING R

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 11

Application Number: 10/024,983

Filing Date: December 19, 2001

Appellant(s): MAXON ET AL.

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Jim L. De Cesare  
Dow Corning Corporation  
2200 W. Salzburg Road  
P.O. Box 994  
Midland, MI 48686-0994  
For Appellant

### EXAMINER'S ANSWER

This is in response to the appeal brief filed October 15, 2002.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 7-12 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,207,717	Lin et al.	3-2001
4,150,048	Schilling, Jr et al.	4-1979
5,889,108	Zhang	3-1999
5,654,362	Schulz, Jr. et al.	8-1997

Remington's Pharmaceutical Sciences, 18th ed., 1990, page 1314

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 7-12 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 8.

**(11) *Response to Argument***

Appellant's rebuttal arguments averring Lin et al.'s teachings is inconsistent with the limitations being recited in the independent claim 7, which specifically excludes non-emulsifying  $\alpha,\omega$ -diene crosslinked silicone elastomers having oxyalkylene units in their structure, are not convincing. The independent claim 7 does not expressly exclude the specific  $\alpha,\omega$ -diene crosslinked silicone elastomers as asserted. In fact, the independent claim 7 only specifically includes the specific  $\alpha,\omega$ -diene crosslinked silicone elastomers, which is taught by Schulz et al.

Appellant's rebuttal arguments averring Schilling et al.'s failure to teach linear silicone polyether as useful for formulate water-in-oil emulsion are not convincing. Schilling, Jr et al. clearly teaches the herein claimed linear silicone polyether as useful as surfactant for formulate aerosol for shaving cream. Because of its surfactant activity, one of ordinary skill in the art would have been expected to employ any known

surfactants, including the herein claimed linear silicone polyether, to formulate a water-in-oil emulsion, absent evidence to the contrary.

Appellant's rebuttal arguments averring no motivation being provided by the cited prior art, because the herein claimed  $\alpha,\omega$ -diene crosslinked silicone elastomers not being needed in Lin et al.'s composition, are not convincing. As discussed in the previous office action mailed October 1, 2002, employing the herein claimed  $\alpha,\omega$ -diene-crosslinked silicone elastomer is motivated because the substitution of  $\alpha,\omega$ -diene-crosslinked silicone elastomer for the an elastmeric silicone polyether into the composition of Lin et al. would provide the benefit of improving the lubrication of the formulations when applied onto the skin due to the unique property of the  $\alpha,\omega$  -diene-crosslinked silicone elastomer.

Appellant's rebuttal arguments averring Remington's failure to teach water-in-oil emulsion are not convincing. It is well known in the art that water-in-oil emulsion and oil-in-water are both consist of two phases, namely water and oil, and a surfactant. The only difference between the emulsions is that the ratio of the two phases is different. In oil-in-water emulsion, the amount of oil is more than that of the water; while in water-in-oil emulsion, the amount of water is more than that of the oil. Please note that the optimization of the effective parameters (e.g., amount of the two phases) would be considered obvious as being within the purview of skilled artisan.

In summary, the cited prior art clearly provide reasons and motivations for one of ordinary skill in the art to combine all the claimed components together because of the

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benefits and improvements the herein claimed components bring to the composition of Lin et al.

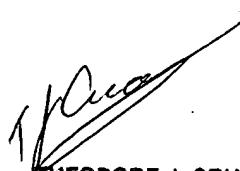
For the above reasons, it is believed that the rejections should be sustained.

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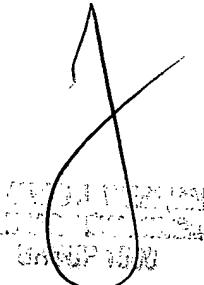
Respectfully submitted,

San-ming Hui  
December 16, 2002

Conferees



THEODORE J. CRIARES  
PRIMARY EXAMINER  
GROUP 1200/600



ANITA V. TURK  
PRIMARY EXAMINER  
GROUP 1200

DOW CORNING CORPORATION CO1232  
2200 W. SALZBURG ROAD  
P.O. BOX 994  
MIDLAND, MI 48686-0994



SREENI PADMANABHAN  
PRIMARY EXAMINER  
(SPE) 12/27/02